IN RESPONSE TO THE OFFICE ACTION:

REMARKS REGARDING AMENDMENTS

Independent claims 1 and 2 have been amended so that the scope and language of the claim is clearer and more precise in defining what the Applicant considers to be the invention. Additionally, claims 50 and 51 have been added. No new matter has been added by the amendments. Support for the amended claims is found in the original specification.

REJECTION UNDER 35 U.S.C. § 103(a):

Claims 1–2, 5, and 7–9 have been rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 5,130,545 to Lussier ("Lussier"). Assignee respectfully requests that the Examiner reconsider and withdraw the above rejection of the claims in view of the following remarks.

The fundamental basis for an obviousness determination under 35 U.S.C. §103(a) was set forth by the Supreme Court in *Graham v. John Deere Co.*, 383 US 1; 148 U.S.P.Q. 459 (1966). In subsequent cases involving a determination of obviousness under 35 U.S.C. §103, the Federal Circuit has noted that the following basic tenets of patent law must be adhered to: 1) the claimed invention must be considered as a whole; 2) the references must be considered as a whole and must suggest the desirability and, thus, the obviousness of making the combination; 3) the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and 4) reasonable expectation of success is the standard with which obviousness is determined. *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 U.S.P.Q. 182, 187, n.5 (Fed. Cir. 1986) (emphasis added). All of the claim limitations must be taught in order to establish obviousness. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Independent claim 1 requires limitations not taught, disclosed, or suggested by Lussier. As noted by the Examiner, Lussier does not teach "an index of his plants features nor selecting plants for a uniform quality end product." (May 19, 2005 Office Action, p. 4) Additionally, claim 1 requires obtaining one or more samples of raw plant product from a customer. These one or more samples are then analyzed. Amended claim 1 further requires a uniform quality end product results from the manufacture of the raw plant product.

Lussier discloses measuring or detecting infrared fluorescence emissions from a plant to determine the overall growth, productivity, and health of the plant. Lussier does not disclose, teach, or suggest the manufacture of a raw plant product. Lussier does not disclose, teach, or suggest obtaining a sample of raw plant product from a customer as required by claim 1. Instead, Lussier allows for field measurements to be taken as it generally measures the emissions from a plant as a whole. Further, Lussier does not suggest a uniform quality end product that results from the manufacture of a raw plant product. As such, Lussier does not teach, disclose, or suggest the invention of amended claim 1. For at least these reasons, Applicant respectfully requests that the Examiner reconsider and withdraw the § 103(a) rejection of independent claim 1.

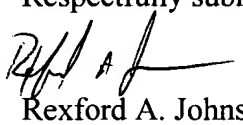
Claims 2, 5, and 7–9 depend from independent claim 1 and thus, incorporate each limitation therein. Therefore, claims 2, 5, and 7–9 are allowable for at least the same reason as independent claim 1. Assignee therefore respectfully requests that the Examiner also reconsider and withdraw the rejection of claims 2, 5, and 7–9.

CONCLUSION

In view of the foregoing amendments and remarks, Assignee believes that all outstanding rejections have been overcome and that the claims are in condition for immediate allowance. New claims 50 and 51 depend from independent claim 1 and thus, incorporate each limitation therein. Accordingly, Assignee respectfully requests that the Examiner indicate the allowance of all pending claims in the next paper from the Office.

The Examiner is invited to contact the undersigned attorney at 713.787.1697 with any questions, comments, or suggestions relating to the referenced patent application.

Respectfully submitted,



Rexford A. Johnson
Reg. No. 57664
Attorney for Assignee
MONSANTO COMPANY

Customer No. 45607
HOWREY LLP
1111 Louisiana, 25th Floor
Houston, TX 77002

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